

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REN JUDKINS,

Plaintiff,

v.

HT WINDOW FASHIONS CORP.,
A California corporation,

Defendant.

Case No. 2:07-cv-00251-GLL

Hon. Gary L. Lancaster

**HT WINDOW's MOTION IN LIMINE #11: TO PRECLUDE REFERENCE TO HT's REDESIGN OF
THE POLARIS SINGLE-CELL DEVICE**

Defendant, HT Window Fashions Corp. ("HT"), respectfully moves this Court in limine for an Order precluding Plaintiff from presenting evidence and argument at trial that HT redesigned the Polaris Single-Cell Device or from arguing that the design change is an admission of or tends to prove infringement. HT's redesign of its single-cell device is not relevant to any issue in this lawsuit, and reference to the redesign would unfairly prejudice HT and confuse the jury by suggesting that HT admitted its first-generation single-cell design infringed the '634 Patent.

The device at issue in HT's declaratory judgment counterclaim of non-infringement of the '634 Patent is HT's first-generation single-cell Polaris product. HT changed the design of the single-cell Polaris product after receiving infringement allegation letters from Plaintiff in 2005. The details of this redesign are provided in HT's Answer (Dkt. #7-1 at 11) and HT's Opposition to Judkins' Motion to Dismiss Counterclaims (Dkt. #22 at 1-3).

The parties agree that the second generation single-cell Polaris product currently sold by HT does not infringe the '634 Patent, and is not at issue here. (Dkt. #22 at 1-2). HT believes that its first-generation single-cell Polaris product, which is at issue, does not infringe the '634 Patent, and HT desires to continue to sell this product.

Evidence regarding HT's second-generation product is not relevant evidence under FRE 401 because it has no tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable. As such, evidence regarding the re-designed second-generation single cell Polaris product is not relevant and should be excluded under FRE 402.

Evidence of the first-generation design change would also unfairly prejudice HT to the extent that Plaintiff argues HT admitted its first-generation design infringed the '634 Patent. This is not the case.

HT never admitted its first-generation design infringed the '634 Patent. When HT received the May 2005 threat letter, the '634 Patent had not issued. To avoid potential disruption to its sales and future conflicts with Plaintiff, HT changed the design of its single-cell Polaris product. This design change was not an admission of infringement. In fact, HT did not even know what the claims of the '634 Patent would be when it changed the design, because those claims did not issue until January of 2007.

HT's redesign is not an admission of infringement, and evidence regarding the redesign would unfairly prejudice HT and confuse the jury. As such, it should be excluded under FRE 403 as well.

HT respectfully requests that the Court grant this motion in limine.

Dated: September 1, 2009

By: /s/ Arne M. Olson

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CERTIFICATE OF MEET AND CONFER

In accordance with the Court's Case Management Order dated June 30, 2009 (Dkt. #119), the undersigned hereby certifies that counsel for the parties have conferred in a reasonable effort to reach an agreement regarding the issues that are the subject of this motion in limine but were unable to reach an agreement.

Counsel for the parties met and conferred by telephone on August 5 to discuss their respective positions and their potential compromises but did not reach agreement.

Dated: September 1, 2009

By: /s/ Arne M. Olson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **HT WINDOW's MOTION IN LIMINE #11: To PRECLUDE REFERENCE TO HT'S REDESIGN OF THE POLARIS SINGLE-CELL DEVICE** was sent via the Court's CM/ECF electronic filing system on September 1, 2009, to:

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